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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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07/098,114 12/20/92 KENPT

D 4681, US, P3

EXAMINER

12M1/0106

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ART UNIT PAPER NUMBER

1260

8

DATE MAILED: 01/06/94

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined ☒ Responsive to communication filed on 10/12/93 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), \_\_\_\_\_ days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.        | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948.                   |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.             | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____  |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-11 are pending in the application.  
Of the above, claims \_\_\_\_\_ are withdrawn from consideration.
2. ☐ Claims \_\_\_\_\_ have been cancelled.
3. ☐ Claims \_\_\_\_\_ are allowed.
4. ☒ Claims 1-8, 11 are rejected.
5. ☒ Claims 9, 10 are objected to.
6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed on \_\_\_\_\_, has been ☐ approved. ☐ disapproved (see explanation).
12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☒ been received ☐ not been received.  
☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

PTOL-326 (Rev. 9-89)

Art Unit: 1203

The specification is again objected to for reasons of record. Applicants' remarks have been carefully considered, but are deemed unpersuasive for the following reasons:

1. A most recent and relevant decision is *Ex parte Balzarini*, 21 USPQ 2ND 1892:

"While the in vitro testing performed on these antiviral compounds appears to be useful as a screening tool in order to determine which of these anti-viral compounds are candidates for further testing to determine if they possess in vivo utility, the in vitro tests were not predicative of in vivo efficacy."

"There is no evidence of record that experimental animal models have been developed in this area which would be predictive of human efficacy. Compare *In re Jolles*, 628 F.2d 1322, 206 USPQ 885."

That standard -predictive of human efficacy - is one which applicants have not come close to meeting.

2. Aids encompasses a variety of wide range of progressive degenerative disease of the central nervous system. Only in vivo tests can tell whether a compound can penetrate the blood-brain barrier.

Claims 1-8 are again rejected under 35 USC 112 first para. for reasons stated above.

Claims 1-8 are again rejected under 35 USC 112 paragraphs one and two. Note terms " alkyl " etc.

Serial Number: 07/998,114

-3-

Art Unit: 1203

Claim 11 is again rejected as being drawn to improper Markush groups for reasons of record. Note the last two compounds.

Claims 9-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

JTF JAN 4, 1994

*JTF Fan*  
JANIE T. FAN  
PRIMARY EXAMINER  
ART UNIT 123